

**Sheet Metal Workers International Association
Local Union No. 19 and Karl Kilpatrick. Case
4-CB-7143**

August 27, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND FOX

On April 16, 1996, Administrative Law Judge William F. Jacobs issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified² and to adopt the recommended Order as modified³ and set forth in full below.

We agree with the judge's conclusion that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by failing and refusing to refer the Charging Party for employment with various employers through the Respondent's exclusive hiring hall. In so doing, however, we find it unnecessary to decide whether the Respondent had an established policy of granting referral priority to individuals who had exhausted their unemployment compensation benefits. In this regard, even assuming arguendo that the Respondent had such a policy, we agree with the judge that the policy was not

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We do not rely on the judge's finding, in connection with the Oct. 19, 1993 referral to George H. Duross, that the Respondent's records show no phone calls to Kilpatrick's home between Oct. 18, 1993, and Feb. 16, 1994, in light of the judge's earlier finding that the Respondent did telephone Kilpatrick during that period.

² The Respondent contends that its failure to refer the Charging Party for the disputed vacancies was not unlawful because the judge did not find a hostile motive or intentional discrimination, which, the Respondent urges, constitute an essential element of the violation. The Board, however, has held that a union may violate Sec. 8(b)(1)(A) and (2) by deviating from its hiring hall procedures even in the absence of a specific discriminatory intent. See, e.g., *Electrical Workers Local 211 (Atlantic Division NECA)*, 280 NLRB 85, 86-87 (1986). Moreover, the complaint in this case is sufficiently broad to encompass violations that do not involve a discriminatory intent. See id. We shall amend the conclusions of law accordingly.

³ We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

lawfully implemented because the Respondent failed to provide adequate notice of it to hiring hall registrants.

The Board has held that when a union changes the rules governing its operation of an exclusive hiring hall, it must make "a good-faith effort to give timely notice of the rule change in a manner reasonably calculated to reach all those who [use] the exclusive hiring hall." *Plumbers Local 230*, 293 NLRB 315 (1989).⁴ The Respondent's purported preference based on exhaustion of unemployment compensation benefits was not included in either the collective-bargaining agreement or the written hiring hall rules, and the judge found that it was not mentioned at all union meetings, as the Respondent asserts. Although Respondent's dispatcher, Willey, testified that he informed members individually of the preference as the situation arose, the judge found that such notification was not consistent and that, even if it were, it would not satisfy the Board's notice requirement. We agree with the judge's findings and with his conclusion that, based on the insufficiency of notice, the Respondent could not lawfully rely on the asserted preference in failing to refer the Charging Party for employment.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3.

"3. By arbitrarily and discriminatorily failing and refusing to refer Karl Kilpatrick for employment with various employers, the Union has restrained and coerced Karl Kilpatrick and other employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act and has been attempting to cause and has caused employers to discriminate against Karl Kilpatrick in violation of Section 8(a)(3) of the Act in violation of Section 8(b)(2) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the Administrative Law Judge as modified and set forth in full below and orders that the Respondent, Sheet Metal Workers International Association Local Union No. 19, Philadelphia, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Restraining and coercing Karl Kilpatrick and other employees in the exercise of rights guaranteed in Section 7 of the Act, and attempting to cause and causing employers to discriminate against Karl Kilpatrick, by arbitrarily and discriminatorily failing and refusing to refer Karl Kilpatrick for employment.

⁴ See also *Operating Engineers Local 406 (Ford, Bacon & Davis Construction)*, 262 NLRB 50 (1982), enfd. 701 F.2d 504 (5th Cir. 1983); *Plumbers Local 519 (Sam Bloom Plumbing)*, 306 NLRB 810 (1992).

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Refer Karl Kilpatrick and other applicants for employment in accordance with the applicable hiring hall rules and make Kilpatrick whole for any loss of earnings he may have suffered as a result of the Union's unlawful failure to refer him for employment.

(b) Within 14 days after service by the Region, post at its business offices and meeting halls copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain and coerce Karl Kilpatrick and other employees in the exercise of rights guaranteed in Section 7 of the Act, and WE WILL NOT attempt to cause and cause employers to discriminate against Karl Kilpatrick, by arbitrarily and discriminatorily failing and refusing to refer Karl Kilpatrick for employment.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL refer Karl Kilpatrick and other applicants for employment in accordance with the applicable hiring hall rules and WE WILL make Kilpatrick whole for

any loss of earnings he may have suffered as a result of our failure to refer him for employment.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION No. 19

William Slack, Esq., for the General Counsel.

Bruce E. Endy, Esq. and *Joseph C. Ragaglin, Esq. (Spear, Wilderman, Borish, Endy, Spear & Runckel)*, of Philadelphia, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. This case was tried before me on April 19 through 21, 1995, in Philadelphia, Pennsylvania. The charge in this case was filed by Karl Kilpatrick,¹ an individual, on February 28, 1994, and amended on April 15, 1994. A complaint issued August 31, 1994,² and alleges that Sheet Metal Workers International Association Local Union No. 19 (the Union), operates an exclusive hiring hall and violated Section 8(b)(1)(A) and (2) of the Act by refusing to refer Kilpatrick to a number of jobs based on arbitrary and discriminatory considerations. The union filed an answer on September 12, 1994, in which it denied the commission of any unfair labor practices.

All parties appeared at the hearing and were afforded full opportunity to be heard and present evidence and argument.

On the entire record³ in this case, from my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the Union admits, and I find that at all times material, the various employers involved in the instant case are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and the Union is a labor organization within the meaning of Section 2(5) of the Act.

A. The Union and the Hiring Hall

The Union maintains its principal office and hiring hall in Philadelphia, Pennsylvania. From this location, it services parts of Pennsylvania and New Jersey and all of Delaware. There are approximately 1500 union members affiliated with the Philadelphia office, dependent on that hiring hall for referral to jobs located within its geographical jurisdiction. John Willey is the dispatcher there and he runs the hiring hall. Thomas Kelly is president. Both are admitted agents of the Union within the meaning of Section 2(13) of the Act.

¹ Kilpatrick's charge was originally consolidated with a charge filed by Joseph Leemon in Case 4-CB-7240. Leemon withdrew his charge during the hearing as part of a non-Board settlement.

² The complaint was amended at the hearing without objection.

³ Counsel for the General Counsel's motion to correct transcript, unopposed, as granted.

During all relevant times there was in effect, a contract between the Union and the Sheet Metal Contractors Association of Philadelphia and Vicinity (SMCA), which was effective May 1, 1992, through April 30, 1995. The SMCA is an association of Philadelphia area sheet metal contractors which represents its member companies in bargaining with the Union. Firms that are members of SMCA include A & G Sheet Metal, Inc., Emil Brandt and Sons, Inc., Wm. J. Donovan Company, George H. Duross, Inc., Hays Sheet Metal, Inc., Knect, Inc., Ernest D. Menold, Inc., RACS Associates, Inc., SDA, Inc., Sharon Sheet Metal Co., Inc., Wegmann Corp., and Willard, Inc.

The subject of hiring is covered in section IV of the Union's contract with the SMCA. Section 1 thereof states "that all employees required for all work within the scope of this Agreement shall be hired only through the Union." However, article IV contains some limitations. Section 1(b) allows signatory employers to "reject anyone referred for employment provided his rejection is not based on union membership or used to achieve selection from the list of the unemployed." The same section permits employees to select two of three referrals regardless of their position on the out of work list (OWL) unless unemployment in the Union is over ten percent in which case, as it was in all relevant times herein, the order of placement on the list may be disregarded in one of every two referrals. Section 1(d) provides that employers may disregard the position of a worker on the OWL when recalling employees laid off within the previous 90 days. Section 1(k) prohibits both employers and employees from soliciting jobs on their own.

The parties stipulated at the hearing that all of the employees listed in the complaint are parties to collective-bargaining agreements that require them to comply with the provisions of article IV of the SMCA agreement when operating within the geographic area serviced by the Union's Philadelphia hiring hall. By entering into this stipulation, I find that the Union has admitted that all referrals at issue in the instant proceeding were made through an exclusive hiring hall. Application of article IV to employers based outside the Philadelphia area, however, permits them to bring two employees with them to any project within the jurisdiction of the Philadelphia office but must hire all additional employees through its hiring hall from the top of the OWL.

In November 1992 the Union supplemented the provisions of article IV with a set of written rules that specify the way that referrals are to be made from the hiring hall. These rules were posted at the union hall shortly after written and copies mailed to the membership in December 1992.

The rules provide that the names of unemployed members be listed in accordance with the number of hours each has worked during the preceding 12 months. Those members with the fewest hours worked during this period are placed at the top of the list. The dispatcher, John Willey, would then normally contact individuals on the list for referral in the order they are listed.

An individual chosen for referral may accept or reject any job to which he is referred. However, if he rejects five consecutive referrals of 30 days or more, he will be automatically placed in the "will call when ready" (WCWR) category. Individuals placed in this category are no longer considered for referral until they contact the Union and advise it that they are ready for referral, at which time they are

placed at the bottom of the OWL. If their unavailability for assignment was due to disability they are considered an exception. If an employee accepts a referral but then fails to appear to perform the work involved, he is penalized 8 hours on the OWL.

Willey maintains the OWL, which is computerized with a new list printed every 2 or 3 weeks. In between printings Willey makes handwritten changes as needed on a daily basis. If an individual is referred successfully to a job, Willey puts a "w" next to his name, along with the name of the contractor and date of referral. If an individual is recalled under the 90-day provision of the contract, Willey also enters the word "recall." If an employer, pursuant to the contract, requests a particular member, in accordance with the percentages provision, Willey includes the name of the representative of the employer who actually made the request. After 30 days, if Willey has heard nothing concerning the referred member, he assumes that the member is still employed and crosses his name off the OWL.

When a member is laid off from a job, he calls the hiring hall and usually reaches the receptionist, Ann Washart. She maintains a log of all incoming calls as does her lunchtime replacement. If the call is for Willey, she forwards it directly to him or takes a message for him. If he is off on vacation or ill, she forwards the call to the financial secretary who performs Willey's duties in his absence. Sometimes Willey answers his calls directly.

If the job from which the caller was laid off had lasted for less than 30 days, and his name is still on the OWL, Willey will cross out the letter "w" and replace it with an "L," then note the date of the layoff and the number of days worked. If the caller's name is no longer on the OWL, Willey will add it to the end of the list, note the date of layoff, the name of the contractor and the number of hours worked by the member during the previous 12-month period. When a new computer printout is periodically prepared, Willey's handwritten changes are incorporated therein. If members possess special skills or prefer to work on particular types of jobs, they advise Willey and this information is included on the OWL.

Willey prepares two other types of documents besides the OWL in performing his duties. One involves the preparation of work list cards. When an employer calls and requests that he be supplied with a referral, or a member calls regarding a request for referral or concerning a layoff, Willey prepares a work list card to cover the situation. On this card, he enters all of the information necessary to update the OWL and computer records including the name of the employer, job site, special skills required for a particular job, if any, estimated length of job and, of course, the name of the member referred, laid off, or recalled. Eventually, all of this information is transferred from the card to the OWL and into the computerized record keeping system. The second type of document is a chronological listing of hires over a given period of time including the ID of the employer and the nature of the hire, whether it is a recall, an employer selection or a referral from the top of the OWL.

When an employer contacts the hiring hall and requests employees, Willey first determines where the jobsite is, how many men will be needed, and how long the jobs is expected to last. He then checks the records to determine if there are members who are eligible for recall, and if the employer is

entitled to choose members from the OWL. If the employer's needs are not fulfilled through recalls or requests, then Willey begins calling the referrals starting at the top of the OWL. He calls each one in order until he has a sufficient number of members willing to accept the referral, to meet the requirements of the employer.

If the individual on the OWL is not available when Willey calls, he will leave a message, if possible, but will immediately call the next man on the list, and refer him to the job if he accepts it. Referrals are thus made in order of personal contact unless special job skills are required or the member rejects the referral.

Willey testified that he follows the above procedure in general, but that there exists a rule or practice that gives preference to members unable to collect unemployment compensation. According to Willey, he would contact members unable to collect unemployment compensation when dispatching referrals before starting at the top of the OWL. To obtain the benefit of this priority, he testified, a member must provide proof of his inability to receive compensation in the form of a written confirmation from a state agency. The system of giving priority to this category of members was in effect before Willey became the dispatcher in July 1989, has been part of the referral system ever since, and is frequently mentioned at union meetings, according to his testimony.

The Union called a number of witnesses to corroborate Willey's testimony that people who do not have unemployment compensation are given priority referral over other members on the OWL and have been given priority since before he became dispatcher.

John Kelly, president and business manager of the Union, testified that on September 28, 1988, the executive board adopted such a resolution after it was proposed by the membership.

Union member Michael Daugherty testified that he attends union meetings regularly and that the rule giving priority referrals to individuals who have exhausted their unemployment benefits is discussed at just about every union meeting. These individuals are told to let the hiring hall know and they will be moved up on the OWL.

Member John Barzeski testified that a member who has run out of unemployment benefits can go to his unemployment office and get a statement to that effect, take it to Willey, and he will do his best to put him right to work. Barzeski testified that he has known about the existence of this rule for all of the 8 years that he has been a member, that he has taken advantage of it himself and that it is mentioned at every meeting.

Member Patrick Keeman, an organizer for the Union and a member of the executive board as of 1988, testified that in that year a lot of the members were running out of unemployment benefits and it was decided that they needed help. Thereafter, the provisions adopted were constantly discussed at union meetings held. Three additional witnesses were called and testified that they were aware of the priority given to members who had run out of unemployment benefits, that the existence of the practice was mentioned frequently at meetings, and that some of them had taken advantage of the practice.

In addition to the testimony provided by the Union's witnesses on the subject, the Union placed in the record, the

minutes of the September 1988 meeting of the Union's executive board at which it was recommended that business agents be permitted to "use their own discretion [sic] on the out-of-work list to put members to work as fast as possible when such members [have] exhausted his or her unemployment compensation." The general membership, at a meeting held the following month, approved the recommendation. Respondent takes the position that giving members who are no longer receiving unemployment benefits, priority over those members on the OWL who are still receiving such benefits has been its policy ever since.

Counsel for the General Counsel argues, on brief, that witnesses for the Union called to testify to the existence of a longstanding policy of preference for members no longer receiving unemployment benefits are not credible because of exaggerations in their testimony. As he points out, Barzeski and Mooney, another witness, both claim that they heard of the preference at the time they joined the Union in 1987 and 1986 respectfully, when the Union, itself, admits that the policy was not put into effect until October 1988. I find this argument well taken.

Moreover, the record contains copies of the minutes of executive board and membership meetings held between 1988 and 1994 at which the operation of the Union's Philadelphia hiring hall was mentioned and in none of them is there any reference to any existing priority given to members because they are no longer receiving unemployment compensation benefits.

The minutes of these meetings cover the subjects discussed in great detail particularly the references to unemployment among the membership but nowhere is a priority for referrals of members out of unemployment benefits mentioned. In numerous cases in these minutes there are references to hiring hall rules being changed but none to the priority herein being discussed. Complete revisions of hiring hall rules occurred in November 1988 and November 1992 and the proposed changes specifically listed in the minutes of the meetings of those dates. Debates over changes were described as well. Yet, priority of referral for members no longer receiving unemployment benefits is ever mentioned. I find the absence of mention of such a priority affords strong argument for the proposition that witnesses for the Union who testified that this priority was discussed at every union meeting should not be credited.

Neither the SMCA contract nor the Union's written hiring hall rules contain any reference to the existence of any priority in referral to be given to any member whose unemployment compensation benefits have run out. This priority, it is claimed, was in existence before the relevant SMCA contract and written hiring hall rules were put into effect, yet neither document makes reference to the unemployment compensation preference although both cover other exceptions to the normal order of referral. Inasmuch as the priority rule here under discussion was not mentioned in either the SMCA contract or in the written hiring hall rules, this fact is evidence, that it did not exist as the longstanding and consistently applied unemployment compensation preference that the Union claims.

The record reflects discrepancies between documentary and testimonial evidence as to precisely when the unemployment compensation benefits exception to the hiring hall rules

first came into effect. Whereas documentation⁴ indicates that it first came into effect in early 1993 and applied only to referrals of less than 30 days, Willey testified that it had been extant in July 1989 and applied to all jobs. Clearly if the alleged preference rule was as concrete and as well established as the Union would have it, there would be a better idea among union officials as to when it came into effect and to what jobs it applied.

Members Karl Kilpatrick and Joseph Leemon both credibly testified concerning their lack of awareness of the existence and applicability of the rule concerning preference for members who lost their unemployment benefits. Kilpatrick testified that he had not heard of the preference at the time of his withdrawal from union membership in March 1994 and Leemon testified that he did not hear of the preference until early 1994. Both testified that they had no unemployment compensation benefits coming in 1993, had informed Willey about this fact⁵ but were not advised by him of the existence of the priority rule. From the credited testimony of these two witnesses it is obvious that the priority of referrals based on a lack of available unemployment compensation benefits was not universally applied and not as longstanding or basic to the hiring hall procedure as the Union alleges.

Indeed, although some of the Union's witnesses testified affirmatively to the existence of the unemployment compensation priority issue, others who gave testimony on other matters were not examined on this subject and it may be justifiable to infer that had they been so examined they would not have been able to support the Union's position.⁶

From the above evidence, testimonial and documentary, I conclude that the Union did not consistently grant preference in referral to members unable to collect unemployment since 1988 as it claims. In order for a member to claim such a preference, he would have to show the dispatcher documentation from the state. The Union provided all available documentation, about 62 pieces. Among all of these there was just one preferential referral based on this priority prior to 1993. Virtually all of the others were in late 1993 and early 1994, around the time that the alleged unlawful referrals occurred. Thus, it is clear that the Union's attempt to rely on a traditional past practice for its position in defending against the allegations contained in the complaint is without foundation. But even if the priority did exist, Kilpatrick was never made aware of the existence of the alleged preference and by failing to advise him of its existence, the Union breached its duty of fair representation, a duty required of all unions and owed to all hiring hall users where an exclusive hiring hall situation exists. The Union was duty bound to make a good-faith effort to notify Kilpatrick and all other hiring hall users of the existence of the supplementary priority list and of the procedures necessary to use it to obtain referrals.⁷ This it did not do.

⁴G.C. Exh. 4.

⁵Willey's denial that he had been informed by Kilpatrick that he had no unemployment compensation is not credited.

⁶*American Lumber Sales*, 229 NLRB 414, 421 (1977); *Ironworkers Local 600 (Bay City Erection)*, 134 NLRB 301, 306 fn. 11 (1961).

⁷*Plumbers Local 519 (Sam Bloom Plumbing)*, 306 NLRB 810 fn. 1 (1992). *Plumbers Local 230*, 293 NLRB 315 (1989); *Operating*

Willey testified that when an applicant for referral calls in and tells him he is out of employment benefits, he tells the applicant to bring in a state unemployment agency statement of proof and this will entitle him to receive preference. He admitted that this kind of informal conversation was the only means he and the Union used to publicize the existence of the priority system. But this was not always done as both Kilpatrick and Leemon credibly testified and even if it were, this would still not meet the requirement of giving sufficient notice of the existence of the rule since it would only reach those who personally contacted Willey and happened to advise him of the fact that they were no longer getting unemployment benefits. Notice of the existence would not reach the rest of the hiring hall users and this failure of notice is clearly deficient.⁸

Kilpatrick credibly testified that after he was laid off in September 1993, he was not eligible to collect unemployment compensation. He remained ineligible through March 1994, right up to the date of his withdrawal from the Union. If the Union had advised him of the existence of the preference given on those grounds, he would have been able to take advantage of that priority list to possibly obtain employment. Since the Union failed to properly notify him of the existence of the priority list, it may not use the existence of that list to justify its failure to refer Kilpatrick in proper order.⁹

B. Kilpatrick—Work History

Karl Kilpatrick, the Charging Party, joined the Union in 1963 and remained a member through March 31, 1994. Throughout the entire period of his membership, he was affiliated with the Philadelphia office and hiring hall.

Throughout the period of Kilpatrick's active membership the work performed by the union's members included the fabrication and installation of heating, ventilating, and air-conditioning systems (HVAC). This is generally known as ductwork. A second category of work done by the members was lagging. Lagging consists of fastening metal sheets over insulation in industrial facilities. A third category of work would be architectural sheet metal work including roofing. Finally, there was the installation of kitchen equipment. Some members were welders and there were times that employees would specifically request a particular individual for a job because he had this ability. Referrals went out both to construction sites and to fabrication shops.

Initially, from 1963 to 1979, Kilpatrick did exclusively ductwork. Since that year he has done mostly architectural sheet metal or roofing work, but continued to work with ducts. In 1984 and 1985 he was employed by Peabody and Winn sketching ducts, that is, planning the placement of in-

Engineers Local 406 (Ford Construction), 262 NLRB 50 (1982), enf. 701 F.2d 504 (5th Cir. 1983).

⁸*Plumbers Local 519 (Sam Bloom Plumbing)*, supra at 813; *Plumbers Local 230*, supra; *Electrical Workers IBEW Local 211 (Atlantic Division NECA)*, 280 NLRB 85, 102, 108 (1986), enf. 821 F.2d 206 (3d Cir. 1987).

⁹*Plumbers Local 230*, supra; *Cell-Crete Corp.*, 288 NLRB 262, 263-264 (1988); *Electrical Workers IBEW Local 581*, 287 NLRB 940, 947-948 (1987); *Plumbers Local 447 (NPS Energy)*, 281 NLRB 42, 47-48 (1986); *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424, 426 (1984), enf. 772 F.2d 571 (9th Cir. 1985).

stallation, for 8 months. During that period of time, he also worked for Bradley, another contractor, for 6 months installing ducts.

Documentary evidence indicates that in June 1989, Kilpatrick worked 2 days for Ertle Roofing. In July he worked for CWR doing ductwork. This job lasted 96 hours. He then returned to work for Ertle again and continued working until at least October of that year. At the time of his layoff from Ertle Roofing, Kilpatrick had an argument with the owner and was never recalled.

In March and April 1990, Kilpatrick worked for R & M doing roofing work for about 3 weeks. In May and June of that year, he worked for Aetna Roofing for about a month. In June and July he worked for the Hamada Company, roofing for a month. At Hamada, on his first day, Kilpatrick showed up for work but there was no work and he went home. He complained to the job superintendent that he should get paid for that day. He was not paid for that day and although he mentioned the problem to Willey, he did not take formal action to resolve the problem.

In August and September 1990, Kilpatrick worked for Brown's Roofing, Inc., roofing for 184 hours. From January through mid-April 1991, he worked for RJ Meyer Company, lagging. In July and August 1991, he worked for AC&S for about a month, lagging. In October or November, he worked for Keystone Company, roofing for about 2 weeks.

In February and March 1992, Kilpatrick worked about 2 weeks for Roth Brothers, Inc. In March and April 1992, he worked for SSM Industries, on ductwork, for about 3 weeks at the Sterling Drug Company construction site. There was a shortage of tools on that job so that the sheet metal workers on the job had to share them. This annoyed Kilpatrick. In discussing the work they were doing at the time, Kilpatrick stated that he preferred doing roofing to ductwork. On the day that the sheet metal workers were given their notice that there would be a layoff, Kilpatrick decided he would leave right then and there and did so, thus losing a day and half pay.

After being laid off from SSM in April 1992, Kilpatrick was not immediately referred out again and began to collect unemployment compensation benefits. These continued into April 1993.¹⁰ In the first week in April, Kilpatrick visited the union hall to pay his dues. While there, he visited Willey in his office and asked him where he stood on the OWL. Willey advised him that he was number 14 on the list. Kilpatrick told Willey that he was shortly going to run out of unemployment benefits.¹¹ Willey said only that when it was Kilpatrick's turn, he would call him. He said nothing about the possibility of his obtaining preference in referrals if he ran out of unemployment compensation and, as mentioned, Kilpatrick, at the time, was unaware of the existence of any such priority system.

Toward the end of April, Kilpatrick called Willey up and asked him again where he was on the OWL. Willey said that he was number 16. Kilpatrick told Willey that his unemployment benefits would run out that week and he needed a job. Willey only replied that he would keep him in mind, again saying nothing about the preference system.

¹⁰ Hereinafter all dates are in 1993 unless indicated otherwise.

¹¹ Willey indirectly denied being advised of Kilpatrick's unemployment compensation benefits situation at any time.

Kilpatrick has an answering machine at his home which is in operation 24 hours per day. In May, he found a message on his machine from Willey stating that he had a duct job for him and to give him a call. Kilpatrick returned the call right away and talked to Willey who told him that he had just given the job away.

Willey did not contact Kilpatrick again until August. At that time, he referred him to Hamada for a job scheduled to begin the following day. When Kilpatrick reported to the Hamada shop there was a brief conversation between Hamada's shop foreman and him after which he decided not to accept the job. Later in the day, Kilpatrick contacted Willey and advised him of his decision. Willey told Kilpatrick that he would put his name back on the OWL.

On August 12, Willey referred Kilpatrick to a job with George H. Duross, Inc. (Duross Roofing). He accepted the referral and worked for that company until about September 15. While employed at Duross he frequently spoke to other individuals on the job about his career as a sheet metal worker. After being advised of the forthcoming layoff he told some of his fellow workers that he did not think that Willey was going to get him any more work and that the job with Duross was probably the end of his career. In another conversation, this one with outside superintendent, Kilpatrick confided that for the past 5 years he had been blacklisted by the Union, that his work assignments had been few and far between and of very poor quality. Consequently, he said, he had been applying for work elsewhere and would accept another job if he did not receive any more referrals by the end of the year. At the time of his layoff from Duross, Kilpatrick was not eligible to collect unemployment compensation benefits.

Kilpatrick's last day on the job was September 15. He left the worksite at about noon and on the way to his car called the hiring hall to report his layoff. He spoke to the receptionist and gave her the particulars. He requested that she advise Willey of his layoff and to have him add his name to the OWL. She promised to relay the message. For one reason or another, Kilpatrick's name was not placed on the list that day.

On the morning of October 18, Kilpatrick called Willey and asked his standing on the OWL. When Willey said that he understood that Kilpatrick was still working for Duross, Kilpatrick advised him of his layoff and subsequent phone call on September 15. He told Willey that he needed the work and Willey said he would keep Kilpatrick in mind.

On October 18, Kilpatrick's name was added to the rear of the OWL. He was listed as having worked 88 hours in the preceding year. When the new list was printed, dated October 26, Kilpatrick's name was included in the body as it was in all subsequent lists while he was still active in the Union. On each OWL, he was listed as having 88 hours worked and was consequently listed near the top. On the October 26 list there were only 21 members with fewer hours who were available for work, and by March 31, 1994, that number had been reduced to just 8.

Sometime after October 18, Kilpatrick received a postcard in the mail indicating that he had been chosen to perform picket duty on October 28. The receptionist has the duty of sending out these cards. When a member receives notice of picket duty, he is required to call the union hall at the receptionist's extension, the day before his picket duty and obtain

from her, his assigned picketing schedule. Kilpatrick called the receptionist on October 27 to discuss his picketing assignment. There was some confusion as to his assignment which necessitated several calls to his home from the receptionist. None of these calls had anything to do with referrals.

Shortly before Thanksgiving, Kilpatrick received a \$50 gift certificate for the Acme Market from the Union. The Union did this for members who had not worked very much during the past year. Kilpatrick, on receipt of the gift certificate, got in his car, drove to the union hall, and went to Willey's office. He tore up the certificate and threw it on Willey's desk stating that he wanted a job, not charity. Kilpatrick and Willey swore at each other for half a minute, then Kilpatrick told Willey to contact him about a job, noting that Willey had his phone number. Willey replied that he did not need Kilpatrick's number, that he was not going to call him for work.¹²

On January 10, 1994,¹³ Kilpatrick went to the union hall to pay his dues. While there, he dropped by Willey's office to ask him about his place on the OWL. Willey threw out a number and Kilpatrick pleaded that he needed a job. Willey's response was, "In a pig's ass."¹⁴

On February 3, Kilpatrick visited the Sheet Metal Workers International Union headquarters in Washington, D.C., to complain about Willey's failure to refer him to jobs. He was told that his situation would be investigated and the following day he was contacted by Albert Larson, the individual assigned to his case. He told Larson his story, and when Larson asked him what type of work he did, he told him that he did both ductwork and roofing but preferred roofing if offered a choice. Larson stated that he would contact Kelly and get back to Kilpatrick.

On February 7, Larson called Kilpatrick again and told him that he had spoke to both Willey and Kelly and that they were holding two things against him, one was the tearing up of the \$50 gift certificate, and the other was the incident involving Kilpatrick's argument with Betty Ertle. Larson suggested that Kilpatrick meet with Kelly to resolve the problem. Kilpatrick declined to meet with Kelly on grounds that their differences were 15 years old and meeting with him would be nonproductive. Larson replied that he had done everything he could for Kilpatrick as of then, and the conversation ended.

On February 16, Willey contacted Kilpatrick to offer him a lagging job for AC&S. Kilpatrick asked Willey if he was the same John Willey who had told him that he was not going to call him for work. Willey denied having made that statement and an argument heavily peppered with vulgarities ensued concerning whether or not the statement had been made. Finally, Willey tried to get the discussion back on track and began to describe the referral job about which he had called. Kilpatrick interrupted stating that the job was not good enough anymore, that he wanted an end to the blacklisting and reparations for the time that Willey had blacklisted him over the past 5 years. He added that he was considering seeing an attorney. Willey asked, "Do you want the . . . job or not?" Kilpatrick replied that he wanted to

talk to an attorney first. Willey ended the discussion with "F you and F your attorney."

Willey admitted that after his February 16 discussion with Kilpatrick he did not call him again because he "gives jobs and had no reparations to offer." Nevertheless, Kilpatrick's name remained on the OWL because Willey did not know what to do about it in light of Kilpatrick's statement about retaining a lawyer.

On March 8, Kilpatrick wrote to Willey announcing his intention of withdrawing from active union membership effective March 31, 1994. There were no contacts between Willey and Kilpatrick between these dates.

Although Kilpatrick maintained a 24-hour-a-day telephone answering machine between October 18, 1993, and March 31, 1994, Kilpatrick credibly testified that between these two dates he received no messages from the Union concerning job referrals except for the call on February 16. Inasmuch as any telephone call from the union hall in Philadelphia to Kilpatrick's home in New Jersey is a toll call which would be recorded, every call would be a matter of record. Similarly, any calls made from Willey's home in Yardley, Pennsylvania, to Kilpatrick's home would also be a matter of record. The only records produced at the hearing were the Union's phone logs and since it is in the Union's interest to prove as many contacts with Kilpatrick as possible, I conclude that those offered into the record reflect all such contacts.

Between October 18, 1993, and March 31, 1994, the telephone logs indicate that there were five calls made from the Union's office to Kilpatrick's home telephone number. The February 16 call, described in detail, *supra*, represents one of the five calls. The two calls made on October 27 on the receptionist's extension, also described in detail, *supra*, account for two more of the five. They were about picketing assignments.

The two remaining calls were made on October 27 and November 13, 1993, both from Willey's extension. The October 27 call was made at 3:39 p.m. and lasted 54 seconds. Kilpatrick denied that this call concerned a job offer from Willey. Willey could not remember the October 27 call but opined that it might have been for the purpose of referring Kilpatrick to a lagging job with National Surface Cleaners or a roofing job with McCann Roofing. However, inasmuch as the receptionist had made two calls to Kilpatrick on October 27, one at 2:40 p.m. lasting 42 seconds and another at 4:18 p.m. lasting 1 minute and 18 seconds regarding picket assignments, and she is just a few steps from Willey's phone, I conclude that the call to Kilpatrick at 3:39 p.m. from his phone was also about Kilpatrick's picket assignment.

The November 13 call was made at 4:07 p.m. and lasted 36 seconds. Like the October 27 call, Kilpatrick denied that this call had anything to do with a job referral from Willey. Again, Willey could not recall making this particular call but surmised that it may have been for the purpose of referring Kilpatrick to Duross for roofing work or to Performance Contractors, Inc. for a lagging job. Inasmuch as Willey could not recall specifically what the November 13 call was about, I am not inclined to assume that it concerned a job referral. Kilpatrick's denial is credited.

¹² Willey testified that the incident did, in fact, occur but denied making the statement attributed to him. I credit Kilpatrick.

¹³ Hereinafter all dates are in 1994 unless noted otherwise.

¹⁴ Willey denied using this expression. I credit Kilpatrick.

Specific Unlawful Referrals

The complaint alleges approximately 130 instances of unlawful referrals. Of these, the following are supported by record evidence sufficient to warrant discussion. In each specific case discussed, on the date of referral, Kilpatrick's name appears on the OWL and is credited with 88 hours worked over the preceding year; the dispatcher, according to telephone records in evidence did not attempt to contact Kilpatrick; and all of the referrals were off the OWL and were not recalls or requests by employers for specific individuals.

The Respondent failed and refused to refer Karl Kilpatrick to employment with the employers listed below, on or about the dates noted:

1. October 19, 1993¹⁵—George H. Duross

William Sullivan was referred to an architectural sheet metal job with Duross on this date. The OWL indicates that Sullivan had worked 495 hours during the preceding 12-month period. The work card does not indicate an estimate of the length of time the job was expected to last and Willey crossed Sullivan off the next OWL on the assumption that he was still employed by Duross for over 30 days. Telephone records indicate that a call was made from Willey's extension to Sullivan's number at 4:46 p.m. on October 18. I find that Willey called Sullivan on October 18 to refer him to the Duross job starting the following morning.

Inasmuch as Kilpatrick's name appeared ahead of Sullivan's on the OWL list at the time of Sullivan's referral, Willey should have called Kilpatrick before Sullivan and referred him to the job. Kilpatrick credibly testified that Willey did not contact him at any time between October 18 and February 16, 1994, and the Respondent's records indicate that no telephone calls were made to Kilpatrick's phone number during this period.

The Union takes the position that it was justified in bypassing Kilpatrick in order to refer Sullivan on this occasion because Sullivan had run out of unemployment compensation benefits at the time and therefore entitled to priority over Kilpatrick. However, I reject this argument because I find that no such consistently applied rule was in place giving priority on this basis. Moreover, Kilpatrick was likewise without such benefits and Willey was aware of this fact. Therefore, if Willey would give preference to Sullivan because he was without unemployment benefits, in fairness, he should have done the same for Kilpatrick. If he had done so, he would have contacted Kilpatrick who had worked fewer hours than Sullivan during the preceding 12 months.

Willey's testimony to the contrary notwithstanding, Sullivan was not entitled to the priority allegedly given to individuals who had run out of unemployment benefits. Willey testified that to become eligible for the preference, a member of the OWL would have to show Willey proof that he was out of unemployment, usually a State Unemployment Office form stating that he had exhausted his benefits. These forms are kept on file in Willey's office in the usual course of business and during the hearing a complete set was made a part of the record. Analysis of these records, however, reveals that Sullivan had not provided Willey with the proper documentation to support any claim to preference on or about the

time of the October 19 referral. Under the procedure which Willey testified was proper, Sullivan was not eligible for placement on the priority list. By failing to refer Kilpatrick rather than Sullivan to the Duross job on October 19, the Union violated Section 8(b)(1)(A) and (2).¹⁶

2. October 19—RSI

Thomas Murphy was referred to a roofing job with Roof Systems, Inc. (RSI) on this date. The OWL indicates that Murphy worked 601 hours during the preceding 12 months. The work card on this referral has the notation "1 day." I find that the notation, as Willey testified, probably refers to the length of time the job was expected to last. The Union argues that since it was a short job, the provision in the hiring hall rules which allows individuals physically present in the hall to be referred to jobs without regard to their positions on the OWL would apply. Willey could not, however, recall if Murphy was, in fact, present in the hall when the referral was made. The General Counsel argues that Willey's inability to remember Murphy's presence on the date of referral eliminates any possibility of reliance on that provision by the Union.

Documentary evidence reflects that no telephone calls were made in connection with this referral and that Murphy had been referred to three other short-term jobs of 2, 5, and 6 days during the previous few months. This indicates that Murphy was probably one of those members who would occasionally, if not frequently, report to the hall in order to pick up a short-term job. I find that it is more likely that this occurred on this occasion than that Willey deliberately passed over Kilpatrick to contact Murphy to give him a 1-day job. I find no violation here.

The Union also argues that whether or not Murphy was referred while physically in the union hall, he was nevertheless entitled to referral because he was entitled to preferential hiring because he was out of unemployment compensation benefits. I reject this argument as I did its application to the Sullivan referral and for the same reasons, namely, that no such lawfully consistent priority list exists, but if it does, then Kilpatrick should have been on it above Murphy and finally, there is no documentation from the State proving that Murphy had a right to be on such a list.

3. October 21—E. Kelly Co.

John Eichenberg and James Marshall were referred to E. Kelly Co., an HVAC contractor, on this date. The OWL indicates that they worked 480 and 512 hours respectively during the preceding 12 months. There are no notations on their work cards indicating that the jobs would be of short duration but as it turned out both worked for 7 days. A cross-reference of the OWL and the work cards with the Union's telephone records indicate that Eichenberg and Marshall were contacted by Willey on October 20 and reported for work with E. Kelly Co. on October 21. They were, I conclude, referred via the phone calls, not through their presence in the union hall. The telephone records reflect no calls to Kilpatrick's number.

The Union's position with regard to this allegation of failure to refer is that it did not do so because Kilpatrick would

¹⁵ Hereinafter all dates are in 1993 unless noted otherwise.

¹⁶ *Carpenters Local 25 v. NLRB*, 769 F.2d 574, 581 (9th Cir. 1985).

have refused to accept HVAC work. Willey testified that shortly after he became the dispatcher, Kilpatrick advised him that he preferred roofing work. Thereafter, when he tried to refer Kilpatrick to HVAC jobs, Kilpatrick refused them. He testified initially that this occurred four or five times but when pressed could not give more than one example.

On the other hand, Willey admitted that Kilpatrick had accepted some ductwork jobs and the record fully supports the conclusion that he frequently performed this type of work. Thus, in March 1992, Kilpatrick performed ductwork for SSM but, according to Willey refused a second referral to SSM 5 or 6 months after leaving there. Willey testified that after Kilpatrick turned down the second referral to SSM he gave up trying to refer him to HVAC jobs because it seemed useless to bother, since Kilpatrick would not accept the referral anyway. However, this is the only specific example that Willey could come up with, that Kilpatrick refused an HVAC job.

Kilpatrick denied telling Willey that he would not accept HVAC work. He also denied refusing referrals to such work. Although he admitted complaining to fellow workers about having to do HVAC and indicated to them a preference for roofing work over other types of sheet metal work, this is not the same as turning down HVAC referrals. Indeed, in May 1993 when he received a message from Willey on his answering machine that "he had a real good duct job" for Kilpatrick, he called Willey back right away, only to be told that the job had been given to another member. The mere fact that Willey bothered to call Kilpatrick at all to offer the HVAC job proves that he believed Kilpatrick would not automatically turn it down and the fact that Kilpatrick returned his call to inquire about the job must have reinforced Willey's understanding that Kilpatrick was still interested in ductwork jobs. That Kilpatrick returned Willey's call when he knew that it involved HVAC work, supports his testimony that he never told Willey that he would not accept such referrals. I credit Kilpatrick on this point.

In this specific instance of failure to refer and in all other cases discussed *infra*, where the Union claims that it failed to refer Kilpatrick because he would not accept HVAC jobs, that defense is rejected for reasons stated immediately above.

With regard to this specific referral the Union also contends that Eichenberg was entitled to receive priority because his unemployment benefits had run out. Although there is documentation indicating that Eichenberg was entitled to preference under this rule, if it in fact existed, so was Kilpatrick and since he had fewer hours of work over the preceding 12 months, he should have been notified and referred before Eichenberg and the Union's failure to properly refer him to this job was violative of Section 8(b)(1)(A) and (2).

4. October 25—SSM

John DeMas and Richard Eastburn were referred to SSM on this date. Since both were recalled, however, and not taken unlawfully from the OWL as alleged in the complaint, there is no violation.

5. October 25—Performance Contracting, Inc. (PCI)

Edwin Mooney was referred for work to PCI, a contractor doing lagging work,¹⁷ on the date noted. The OWL indicates that Mooney had worked 629 hours during the preceding 12 months. The work card bears no notation indicating a short-term referral and Mooney remained with PCI until his layoff on December 30. Clearly, this was not a referral based on Mooney's being present in the hiring hall. Moreover, union telephone records reflect that the hiring hall contacted Mooney's home on October 22 and I conclude that the purpose of the Friday afternoon call was to have Mooney report to PCI for work the following Monday morning.

The Respondent posits the unemployment benefits defense to this allegation. For reasons stated *supra*, I reject this defense and find the 8(b)(1)(A) and (2) violation.

6. October 25—Controlled Air

Richard Briglia was referred to Controlled Air, an HVAC contractor, on this date. The OWL indicates that Briglia had worked 556 hours during the preceding 12 months. Union phone records indicate that he was contacted about the job on October 22 and other documentation reflects that he worked for Controlled Air for 10 days.

The Respondent takes the position that Kilpatrick was not referred to this job for two reasons. The first is that he would not accept HVAC jobs. This defense has been discussed in connection with other allegations and is rejected for the same reasons. The second reason is that Kilpatrick would not accept short-term jobs. With respect to the latter argument, Willey testified that Kilpatrick frequently refused to accept referrals estimated to last less than 1 or 2 weeks. When pressed, however, he could not recall any specific jobs that he turned down because they were too short. I conclude that Kilpatrick, like the other potential referrals, preferred the longer jobs to the short-term jobs. But there is insufficient evidence to support Willey's conclusion that Kilpatrick would turn down a 10-day job referral or that he was justified in refusing to contact him because of his suspicion that he would do so.

Further, although Kilpatrick admitted telling Willey after getting nothing but short jobs, that he wanted longer jobs, something that lasted 2 or 3 weeks, he credibly and specifically denied that he ever turned down any job because it was too short. Kilpatrick's work history includes several short-term referrals: a 2-day referral to Ertle Roofing in June 1989 and a 2-week job with CWR Inc. in June 1989, Keystone Roofing in November 1991, and Roth Brothers in February 1992. Moreover, since Willey could not recall any specific instances of Kilpatrick turning down offers of short-term referrals, I find Kilpatrick's denial that he ever did so, credible and conclude that the Union's reliance on this argument is without substance. Consequently, the Union's defense to the unlawful October 25 referral of Briglia to Controlled Air, based on grounds that Kilpatrick would not accept short-term referrals is without substance and is rejected both with regard to this particular allegation and all others.

¹⁷ Kilpatrick, in the past, had stated that he did not enjoy lagging work. Nevertheless, he had historically accepted referrals to perform and did perform such work many times over the years.

7. October 27—Air Tech

Steven Cappolino was referred to Air Tech, a duct cleaning company, on this date. The OWL indicates that Cappolino had worked 418 hours during the preceding 12 months. The work card bears no indication that the referral was a short-term job. Union phone records reflect that Cappolino was contacted by the hiring hall on October 26. I conclude that the call was for the purpose of referring Cappolino to the Air Tech job.

The Union takes the position that it did not offer Kilpatrick this referral because it involved HVAC work. I have found this defense without substance. Consequently, the Union has shown no justification for referring Cappolino to the Air Tech job before Kilpatrick. The referral is therefore in violation of Section 8(b)(1)(A) and (2).

8. October 27 and 28—National Surface Cleaners (NSC)

Henry Spalding and Anthony Dragon were referred to NSC, a company that does lagging jobs, on these dates respectively. As of their dates of referral, Spalding had worked 2606 hours and Dragon 168 hours during the preceding 12 months. Dragon's name was eventually crossed off the OWL indicating that he continued to work for NSC for over 30 days. Both Spalding and Dragon received telephone calls from the hiring hall on October 26 and 27 respectively. The calls to Kilpatrick on October 27, I have found, concerned picket duty.

The Union defends this referral on the unemployment compensation preference grounds which I have found inadequate. Consequently, I find that the Union, by choosing to refer Spalding and Dragon before Kilpatrick violated Section 8(b)(1)(A) and (2).

9. October 28—John McCann, Inc.

Patrick McKenna was referred to John McCann, Inc., a roofing contractor, on this date. As of the date of his referral, McKenna had worked 478 hours during the preceding 12 months. The work card dated October 28 does not indicate that the job was a short-term referral and the out-of-work list for November 23 has him still employed. Telephone records reflect a call from Willey's extension to McKenna's home on the afternoon of October 27. I find that McKenna was referred by Willey at this time for the McCann job. By passing over Kilpatrick to refer McKenna, the Union violated the Act.

10. November 8—Oreland Sheet Metal

Jesse Jones and Todd Marconi were referred to Oreland, an HVAC contractor, on this date. At the time, they had worked 304 and 317 hours, respectively, over the preceding 12 months. The work card bears no notation indicating that the referrals were for short-term jobs but the OWL reflects that Marconi worked for Oreland just 5 days. Still, the Union's telephone records reflect that calls were made from Willey's extension to the homes of Jones and Marconi on November 6. I find that these Saturday phone calls were made for the purpose of referring Jones and Marconi to Oreland for work with Oreland to start November 8.

The Union's defense to this allegation is based on its claim that Kilpatrick would not accept HVAC referrals. For

reasons stated, the Union's claim has been and is rejected. I find the Union in violation in this instance.

11. November 8—Wm. Donovan Co.

Nicholas Vishio and Christopher Malinowski were referred to Donovan, an HVAC contractor, on this date. At the time, they had worked 213 and 692 hours, respectively, during the preceding 12 months. Their work cards bear no short-term job notations. Union telephone records reflect that calls were made from Willey's extension to their homes on November 6. The Union offered no explanation and therefore no defense to the allegation that their referral of Vishio and Malinowski instead of Kilpatrick in this instance was unlawful. The violation is clear.

12. November 9—George H. Duross

Robert McIlhenny was referred to Duross on this date. At the time, he had worked 448 hours during the preceding 12 months. The work card bears no short job notation and the OWL indicates that McIlhenny was still on the job at Duross after 15 days. The Union's telephone records reflect that a call was made from Willey's extension to McIlhenny's home on November 9. I conclude that the call was for the referral.

The Union's position as to why it did not refer Kilpatrick to this job rather than McIlhenny was not made clear either at the hearing or subsequently. The lack of explanation requires me to find the Respondent in violation of the Act.

13. November 9 and 10—Wegmann Corp.

Frank Flem and Donald Mancer were referred to Wegmann, a HVAC contractor, on November 9 and Charles Cassise on November 10. As of the referral dates, these three members had worked 178, 349, and 471 hours, respectively, over the preceding 12 months. The work cards for their referrals bear no notations indicating the referrals were for a short job. Casisse's card, however, notes a request for a sketcher. The OWL indicates that these three worked for 15, 22, and over 30 days respectively. Union telephone records reflect that calls were made from Willey's extension on November 6 to Flem's home and on November 9 to Mancer's and Cassise's homes. It is clear that these were telephone referrals to jobs to which Kilpatrick should have been referred since he was higher on the OWL.

The Union offered no explanation as to why Kilpatrick was passed over. I find these referrals unlawful.

14. November 8 and 9—Hays Sheet Metal

Timothy Laidlaw, Robert Whitaker, and Haskel Amit were referred to Hays, an HVAC contractor, Laidlaw and Whitaker on November 8 and Amit on November 9. At the time of their referrals they had worked 296, 864, and 420 hours, respectively, during the preceding 12 months. The work card for Laidlaw and Whitaker bears no indication that the referral was for a short-term job. Amit's card is marked "1-2 weeks." Whitaker's name was eventually crossed off the OWL, thus indicating that he had worked for Hays for over 30 days.

The Union contends that Kilpatrick was not offered these referrals because he would not accept either HVAC or short jobs. For reasons stated, I reject these defenses and find the Union in violation of the Act.

15. November 10—Fox & Sons Roofing

Harry Filler and John Collins were referred to Fox, for a siding job, on this date. At the time of their referrals, they had worked 491 and 666 hours, respectively, during the preceding 12 months. The work card for this referral does not indicate that it was for a short job. The Union's telephone records indicate that a call was made to Filler on November 10 on Willey's extension. I find that this call was the referral.

The Union's defense to this allegation is based on its claim that Kilpatrick would not accept short-term referrals. For reasons already stated, this defense is rejected. The second reason given for not referring Kilpatrick to this job is that Kilpatrick could not do siding. Willey testified to this but gave no reason or explanation as to why he held that opinion. Kilpatrick testified to the contrary, explaining that putting up siding is considered part of architectural sheet metal work, and credibly testifying further that he has had experience in this area. I find that the union defense to this allegation is inadequate and that by failing to offer Kilpatrick this referral, it violated the Act.

16. November 11—Hays Sheet Metal

Russell Call was referred to Hays on this date and, as of then, had worked 502 hours during the preceding 12 months. The work card does not indicate that this referral was for a short-term job or that any special skills were required. The Union's telephone records indicate a communication on Willey's extension to Call on November 10. He started work for Hays on November 11 and worked there for 9 days. I find that Willey contacted Call by phone and referred him to Hays by this means.

The Union defends this allegation of unlawful referral on the familiar grounds that Kilpatrick would not accept short jobs or HVAC referrals. For reasons previously stated, I find these defenses meritless.

An additional reason offered for not referring Kilpatrick to this particular job is that it required specialty wiring skills. However, Willey did not testify as to the basis for this contention and the work cards which usually reflect any special skills required do not mention that specialty wiring skills would be needed. The Union offered no evidence or testimony to support its mere assertion that special wiring skills were necessary to perform the job. However, the work card does mention sketching and Kilpatrick could do this. I find that no such wiring skills were required and that the Union violated the Act in failing to refer Kilpatrick to this job.

17. November 11¹⁸—Saling Roofing

Joseph Clark was referred to Saling Roofing on this date and, as of then, had worked 539 hours during the preceding 12 months. The work card does not indicate a short-job referral and records reflect that Clark remained in the employment of Saling until January 17, 1994. Willey telephoned Clark on November 11 to refer him to the Saling job.

The Union offered no explanation as to why it passed over Kilpatrick to unlawfully refer Clark to this job and I find that it did so in violation of the Act.

¹⁸This date reflects an amendment to the complaint made at the hearing.

18. November 15—Hays Sheet Metal

Steven Burrows was referred to Hays on this date by which time he had worked 696 hours over the preceding 12 months. This was not a short-term referral. The Respondent offered no explanation as to why it bypassed Kilpatrick to refer Burrows. I therefore find the Union in violation.

19. November 15—PCI

On November 15, Willey referred seven men to PCI, for a lagging job, all with more hours worked in the preceding 12 months than Kilpatrick. These were Scott Boulden—400 hours, Frederick Mohrfeld Jr.—422 hours, Richard Briglia—431 hours, Jimmy Skinner—452 hours, Frederick Gayda—663 hours, Harry Griffith Jr.—746 hours, and Edward Beebe—2225 hours. The work card covering all seven referrals does not indicate that any of these referrals were expected to be short-term jobs. Most men referred to the November 15 job at PCI remained employees until December 30 or into January 1994. Telephone records indicate that Willey contacted Boulden, Mohrfeld, and Gayda to make the referrals to this job between 5:05 and 5:18 p.m. on Friday, November 12.¹⁹ These were three of the four last calls made that day from Willey's extension. Since Willey testified that he sometimes made telephone calls from his home, I conclude that he contacted the other referrals to this job by telephone from his home after leaving his office, since all of the referrals apparently reported for work at PCI on November 15 and must have been contacted some way.

The Union's defense to this allegation is based on the already rejected grounds that these were short-term referrals or were made to referrals who had exhausted their unemployment benefits. I therefore find the violation as alleged.

20. November 15—George H. Duross

James Pakenas was referred to Duross on this date. By November 15, Pakenas had worked 623 hours during the preceding year. The work card does not indicate a short-term job. The referral from Willey's extension to Pakenas' home phone, was made the Friday preceding November 15.

The Union's short-term job defense is rejected and I find the violation.

21. November 16—E. Kelly Co.

John Knapp was referred to Kelly on November 16 at which time he had been credited with 525 hours worked. The work card does not reflect a short-term job. Willey made the referral by telephone call to Knapp's home. His name was eventually crossed off the OWL thus indicating that he worked for Kelly for over 30 days.

The Respondent reiterates its HVAC and short-term job refusal defenses which are rejected. I find the violation.

22. November 16—A & G Sheet Metal

John Eichenberg and Joseph Dolan were referred to A & G on November 16 at which time they had been credited with 371 and 849 hours worked, respectively. The work card does not reflect a short-term job. Willey made the referral to

¹⁹Apparently due to a computer error, dates of calls made from Willey's extension are 1 day off between the dates of November 1 and 20.

Eichenberg by telephone call to his home. Dolan worked 7 days.

The Union asserts the HVAC short-term job refusal and unemployment compensation defenses which are rejected.

23. November 16—Supersky

Arthur Brookes Jr. was referred to Supersky on November 16 at which time he was credited with 568 hours worked. Supersky installs skylights. The work card does not indicate a short-term job and Brooks remained employed with Supersky for in excess of 30 days so that his name was crossed off the OWL. Willey had referred Brookes by telephone call to his home.

The Union's short-term job refusal defense is again rejected. The Union also noted that installation of a skylight was involved. However, Kilpatrick testified that he had experience as a roofer, installing skylights. The Union's failure to refer Kilpatrick was unlawful.

24. November 16—Staffco

John Collins and Harry Filler were referred to Staffco on November 15 at which time they were credited with 666 and 491 hours worked, respectively. Staffco installs skylights. The work card does not indicate a short-term referral. Willey called Collins at his home to refer him to this job, thus indicating he was not physically in the hiring hall when referred. However, Collins was nevertheless laid off November 18.

The Union's short-term job defense and its reliance on the fact that installing skylights was the job involved are both rejected for reasons previously stated. I find the allegation of unlawful referral meritorious.

25. November 18—Brown Roofing

Edward Clark was referred to Brown on November 18 at which time he was credited with 630 hours worked. The work card does not indicate a short-term job. Willey referred Clark to this job by a telephone call to his home. The job lasted 15 days.

The Union's exhaustion of unemployment compensation benefits defense applied by it to the circumstances of this incident, I find, for reasons already stated, inadequate. The referral was unlawful.

26. November 22—George H. Duross

David Birch was referred to Duross on November 22 at which time he was credited with 240 hours worked. The work card does not indicate a short-term job. Willey referred Birch to this job by telephone call to Birch's home. The job lasted until December 7.

The Union's short-term job defense is rejected. I find an unlawful referral.

27. November 22—PCI

Haskel Amit, Gilbert Keller, Royce Hale, and Joseph Ilconich were referred to PCI on November 22 at which time they were credited with 452, 483, 585, and 598 hours worked, respectively. The work card for this referral does not indicate that it was for a short-term job. Willey referred Keller, Hale, and Ilconich by calling them at their homes on November 19.

The Union defends these unlawful referrals on grounds that Ilconich and Hale were entitled to priority for referral because they were out of unemployment compensation and because this was a short-term referral, and Kilpatrick would have turned down the job for this reason, at any rate. For reasons stated, these are not valid defenses. The referral was unlawful.

28. November 23 and 26—Air Tech

Joseph Obrick and Sam Green were referred to Air Tech, already identified as a duct cleaning company, on November 23 and Paul Hurst was referred to the same company on November 26. At the time they were credited with 295, 383, and 400 hours worked, respectively. The work cards do not indicate a short-term job referral. Willey referred all three to Air Tech by calling them at their homes. Obrick's name was crossed off the OWL, thus indicating that he worked for Air Tech for over 30 days. The Union's defense that this was an HVAC job is rejected.

29. November 26—King Mechanical

John Eichenberger and Charles Bush were referred to King Mechanical, a company doing HVAC and heavy industrial work in the area, on November 26. At the time, they were credited with 227 and 552 hours worked, respectively. The work card indicates a probable completion date of December 23. Eichenberger worked until December 23 while Bush lasted 47 days on the job. These jobs clearly were not short-term jobs. Willey probably made these referrals on November 25 from his home since records indicate no calls at all were made from the hiring hall that day, Thanksgiving, and it was closed for the holiday.

The Union's defenses:²⁰ HVAC; unemployment exhausted. These defenses are inadequate for reasons stated. Violation found.

30. November 29—George H. Duross and AC&S

The complaint alleges a failure to refer Kilpatrick to Duross on November 29. However, since the Union's records indicate no referrals were made on that day to Duross, I recommend dismissal of this allegation.

Thomas Cahill was referred to AC&S on November 29 as a welder. Kilpatrick admitted that he was not very good at welding. I find no violation.

31. November 29—Oreland Sheet Metal

Philip Diaz and Edward Donahue were referred to an HVAC contractor, Oreland Sheet Metal, on November 29. At that time, they were credited with having worked 436 and 389 hours respectively. The work card does not indicate a short-term job but the job lasted 1 day or less for both referrals. Although from the Union's telephone records, it would appear that Willey made many other referrals this date, there is no indication or reason to believe that he contacted Diaz and Donahue by phone to refer them to Oreland ahead of Kilpatrick. Rather, it is more likely that they were sent from the hall on a short-term job referral. I find no violation.

²⁰ The Union, in defending against each specific allegation, used a short-hand method which seems appropriate for usage here, in order to save time and space. See R. Exh. 5.

32. November 29—PCI

William Morgan Jr. and Nicolas Vishio were referred to PCI on November 29. At that time, they were credited with 309 and 429 hours, respectively. The work card does not indicate a short-term job. Morgan worked 31 days for PCI and Vishio's name was taken off the OWL.

The Union's defenses: unemployment exhausted and short-term job to finish project.

I find, for reasons stated, that the "unemployment exhausted" defense is without merit and that the "short-term job" defense was not true. I find a violation.

33. November 29—National Surface Cleaners (NSC)

Howard Steigerwald, Keith Null, and Francis Plasha were referred to NSC on November 29. At that time, they were credited with 271, 91, and 714 hours, respectively. Steigerwald and Null were on the same work card. It indicates no estimate as to the length of the job. Plasha's work card bears the note "2-days." His name, however, appears on the next several lists as still working for NSC and is not removed until the OWL of January 14, 1994. Willey contacted Null by telephone from his office but not the other two, according to records. Null's and Steigerwald's names were crossed off the OWL, thus indicating their jobs were for over 30 days.

The Union offered no defense to the referrals of Null and Steigerwald. I find these referrals violative. I also find a violation with regard to the referral of Plasha since it appears that he remained employed by NSC for several weeks, notwithstanding the note on his work card.

34. November 29—SSM

Edward Marshall, Edward Kouser and James Pinto were referred to SSM on November 29. At the time, they were credited with 96, 104 and 232 hours respectively. Their work cards do not indicate a short-term referral. Willey contacted Marshall and Kouser by telephone on November 26 to make the referral. Marshall and Kouser worked for SSM through January 7, 1994. Pinto worked 10 days.

The Union's defense: HVAC

The Union's defense is rejected. I find a violation.

35. November 30—PCI

Edward Donahue and Donald Marchionese were referred to PCI on November 30. At the time they were credited with 389 and 454 hours, respectively. Their work card does not indicate a short-job referral. Willey telephoned the home of Marchionese on November 29 to make the referral. Donahue and Marchionese both worked for PCI for 29 days.

The Union's defense: short term to finish job.

The Union's defense is rejected since both Donahue and Marchionese remained with PCI for 29 days. The violation is found.

36. November 30—Oreland Sheet Metal

Joseph Coruso, James Fitzgerald, and Atanasio Kiritsis were referred to Oreland on November 30. At the time, they were credited with 570, 693, and 1133 hours, respectively. Their work card does not indicate a short-term referral and they all worked for this employer for 22 days. Willey re-

ferred Coruso and Kiritsis by direct telephone call to their homes on November 29.

The Union's defense: HVAC and short-term duct cleaning.

The Union's defenses are rejected. The violation is found.

37. November 30—Ernest Menold Co.

William Bergmann, George Binczewski, Danna Walker, Edward Daugherty, Thomas Blessing, Michael Harris, and John Gadola were referred to Menold on November 30. At the time, they were credited with well over 300 hours each. Their work card does not indicate a short-term referral. Willey referred at least six of the seven by telephone calls to their homes on November 29. Four of the seven referrals continued working for Menold for 9 days or more, one for 3 days and two for 4 days.

The Union's defenses: HVAC; 1-week shutdown at Scott Paper; unemployment exhausted; short term.

The Union's defenses are all rejected for reasons stated. None of these referrals were made to individuals physically present in the hall to jobs lasting less than a week. All were contacted at their homes by telephone except perhaps Blessing and his name was crossed off the OWL thus indicating that he kept his job for over 30 days—clearly not intended to be one of the short-term referrals. I find a violation.

38. December 1—PCI

Steven Thomlinson, Gary Houlahan, and John Krawecz Jr. were referred to PCI on December 1. At the time, all of them were credited with more hours worked than Kilpatrick. Their work card does not indicate a short-term referral. Willey called Krawecz on November 30 at his home to refer him to this job. All three worked for PCI for between 18 and 22 days.

The Union's defenses: unemployment exhausted; PCI short term to finish job.

The Union's defenses are rejected. The violation is found.

39. December 2—PCI

Gene Reavis Jr., Robert Gleason, and John Collins were referred to PCI on December 2. At that time, they all were credited with more hours worked than Kilpatrick. Their work card does not indicate a short-term referral. Willey telephoned Gleason and Collins at their homes on December 1 to refer them to their jobs. All three worked for PCI for over 17 days.

The Union's defenses: PCI short-term to finish job; unemployment exhausted.

The Union's defenses are rejected. Violation found.

40. December 2—Warko Roofing

Harry Harvey was referred to Warko on December 2. Warko does both roofing and HVAC work. At the time he was credited with having worked 1624 hours. His work card does not indicate a short-term referral and Harvey worked 16 days for this company.

The Union's defenses: short-term referral to finish job.

The defense is rejected. Violation found.

41. December 3—PCI

Thomas Finch, James Gallagher, Billie Prigger, and Daniel Strang were referred to PCI on December 3. At the time, all

were credited with having worked more hours than Kilpatrick. Their work card does not indicate a short-term referral. Willey contacted all four at their homes by telephone on December 1 and 2 to refer them to this job. Finch worked over 30 days, Gallagher 29 days, Prigger 26 days, and Strang 24 days for PCI on this referral.

The Union's defense: PCI short-term to finish job; unemployment exhausted.

The Union's defenses are rejected. The violation is found.

42. December 6—Saling Roofing²¹

John Kaase was referred to Saling Roofing to perform roofing work on December 6. At that time, he was credited with 590 hours. His work card indicates that the job was supposed to last only 2 days. Willey contacted Kaase at his home by telephone, however, on December 3, thus indicating that the job was not given to an individual who was physically in the hall under the short-term job referral exception. As it turned out Kaase continued to work for Saling for 16 days.

The Union's defense: short-term job.

Inasmuch as the job was not referred to an individual physically present in the hiring hall at the time of referral and Kilpatrick never stated that he would not accept any short-term jobs, the Union's failure to call him before Kaase is violative of the Act.

43. December 6—E. J. Deseta

Joseph Weachter was referred to Deseta on December 6. At the time, he was credited with 432 hours. His work card estimated the job at 1-1/2 weeks. Willey telephoned Weachter at home on December 3 to refer him to his job.

The Union's defense: HVAC.

The defense is rejected. The violation is found.

44. December 6—Warko Roofing.

Robert McIlhenney and John Mathes Jr. were referred to Warko on December 6. At the time, both had more hours worked than Kilpatrick. The work card indicated that the job was expected to last 1-2 weeks, but McIlhenney remained employed at Warko for 21 days.

The Union's defense: 1-2 weeks.

The defense is rejected. The violation is found.

45. December 6—PCI

James Marshall and Russell Call were referred to PCI on December 6. At the time, both had more hours worked than Kilpatrick. Their work card does not indicate that the job was expected to be a short-term job. Willey telephoned Call to make the referral on December 3.

The Union's defense: short-term to finish job; HVAC—couple days.

The defense is rejected. The violation is found.

46. December 6—Controlled Air

Joseph Lechner and Charles Doyle were referred to Controlled Air on December 6. At the time, both had more hours worked than Kilpatrick. Their work card indicates that the job was expected to last 2 weeks. Willey contacted both

Doyle and Lechner by telephone at their homes on December 3 to refer them to this job.

The Union's defense: HVAC—couple days.

The defense is rejected. The violation is found.

47. December 7—King Mechanical

Edward Felix was referred to King on December 7. At the time, he was credited with 631 hours. His work card indicates that King had requested a welder. Since Kilpatrick was not a welder, I find no violation.

48. December 7—Tri-Aire, Inc.

Thomas Murphy was referred to Tri-Aire on December 7. At the time, he was credited with more hours worked than Kilpatrick. His work card indicates a 5-7-day job. Willey referred Murphy to this job by contacting him at his home by telephone on December 6.

The Union's defense: HVAC; 5-7 days short term.

The Union's defense is rejected. Violation found.

49. December 7—PCI

Carmen Bonacci Jr. and Timothy Mullen were referred to PCI on December 7. At the time, both had more hours worked than Kilpatrick. Their work card does not indicate a short-term job. Willey contacted both Bonacci and Mullen by telephone on December 6 to refer them to this job. Mullen was still employed by PCI as of December 28.

The Union's defense: short term.

The Union's defense is rejected. Violation is found.

50. December 9—Wm. J. Donovan

John Callaghan and Thomas Pace were referred to Donovan on December 9. Their work card does not indicate that the referrals were to a short-term job. At the time, both had more hours worked than Kilpatrick. Willey contacted Callaghan at his home by telephone on December 8 to refer him to this job. Callaghan worked for Donovan over 30 days.

The Union's defense: HVAC; shop work.

There is no evidence that Kilpatrick was not willing to perform shop work. The Union's defense is rejected.

51. December 9—E. J. Deseta

Jerome Scogna and John Weinberg were referred to Deseta on December 9. The work card indicates that this job was expected to last 6 months. At the time, Weinberg was credited with having worked only 56 hours and there is no violation as far as his referral is concerned. However, Scogna, at the time was credited with 209 hours and should not have been referred before Kilpatrick. Both Scogna and Weinberg remained with Deseta long enough to have their names removed from the OWL.

Union's defense: unemployment exhausted; HVAC work.

The Union's defense is rejected. Violation found with regard to Scogna's referral.

52. December 9—E. J. Deseta

Jeffrey Young was referred to Deseta on December 9. His work card noted that the job was estimated to last 1 week. At the time, Young was credited with 846 hours. Willey con-

²¹ Added by amendment at the hearing.

tacted Young at his home on December 8 to refer him to this job.

The Union's defenses: HVAC; unemployment exhausted; short-term job.

The Union's defenses are rejected. Violation found.

53. December 9—Brown and Guarino

Timothy Beckel Jr. was referred to Brown and Guarino, a roofing company, on December 9. At the time, he had worked 701 hours. His work card did not indicate a short-term job. Beckel worked for Brown and Guarino for 13 days.

Union's defense: short-term job.

The Union's defense is rejected. Violation found.

54. December 10—E. J. Deseta

Dennis Capilato and Barry Goldstein were referred to Deseta on December 10. Their work card indicates that the referral was estimated to be a 1-day job. Nevertheless, these were not short-term job referrals made to individuals present in the haul. Willey contacted both Capilato and Goldstein by telephone calls to their homes on December 9 to refer them to Deseta. Capilato worked 2 days and Goldstein one.

The Union's defense: HVAC; short-term job—1 day.

The Union's defense is rejected. The violation is found.

55. December 10—Heistand Roofing

Joseph Roth was referred to Heistand on December 10 to do roofing work. At the time, he had been credited with 470 hours. His work card does not indicate a short-term job. Willey referred Roth to this job by telephone on December 9.

The Union offered no defense to this allegation and the violation is found.

56. December 10—PCI

David Zychal and Michael Sullivan were referred to PCI on December 10. Their work card does not indicate a short-term job. At the time, they were credited with 573 and 446 hours, respectively. Willey contacted Zychal by telephone on December 9 to refer him to this job. Zychal worked for PCI for 10 days following this referral and Sullivan worked for 21 days.

The Union's defense: none.

The violation is found.

57. December 13—PCI

Edward Clark, William Popoff, Marion Matthews, William Sullivan, William Fritsch, and Harry Filler Jr. were referred to PCI on December 13. Their working card does not indicate a short-term job. At the time, at least five of the six referrals had more hours worked than Kilpatrick. Willey contacted all six individuals by telephone at their homes on December 9, 10, and 13 for referral to this job.

The Union defense as to the referral of Clark was that his unemployment was exhausted. No defense was offered as to the others.

The single defense is rejected. The violation is found.

58. December 13—E. J. Deseta Co., Inc.

Philip Diaz Jr. was referred to Deseta on December 13. His work card indicates an estimate of 1 month for the job. At the time, Diaz had been credited with 436 hours.

The Union's defense: HVAC.

The Union's defense is rejected. Violation found.

59. December 13—Wm. J. Donovan Company

Robert Amico was referred to Donovan on December 13. His work card does not indicate a short-term referral. At the time, Amico was credited with 726 hours.

The Union's defense: HVAC; shop.

The Union's defense is rejected. Violation found.

60. December 13—Onorato Sheet Metal

Philip Marano was referred to Onorato on December 13. His work card indicates the job was to last 1 week. At the time, Marano was credited with 424 hours.

The Union's defense: HVAC; 1 week.

The Union's defense is rejected. Though the referral was for 1 week, Kilpatrick never said that he would not accept short referrals and the Union did not claim that Marano accepted this referral while physically in the hall. The Union should have referred Kilpatrick before Marano. Violation found.

61. December 13—E. J. Deseta

Thomas Blessing was referred to Deseta on December 13. His work card indicates an estimated 1-month job. At the time, Blessing was credited with 384 hours.

The Union's defense: none.

The violation is found.

62. December 14—PCI

Laurence Murphy Sr. was referred to PCI on December 14. His work card does not indicate a short-term job. At the time, Murphy had worked 587 hours. Willey contacted Murphy by telephone at his home on December 10 to make this referral.

The Union's defense: unemployment exhausted.

The defense is rejected. Violation found.

63. December 15—North American Roofing

David Birch and Matthew Clark were referred to North American Roofing on December 15. Their work card indicates a 2-day job. At the time, they had both been credited with more hours than Kilpatrick. Willey had contacted both Birch and Clark at their homes on December 14 to make the referrals. The jobs lasted 2 days.

The Union's defense: 2 days.

Since the referrals were made by telephone, the Union should have contacted Kilpatrick. Violation found.

64. December 15—PCI

Glenn Neuber, John Reilly, and Charles Burkert were referred to PCI on December 15. Their work card does not indicate a short-term job. At the time, they were credited with 554, 648, and 693 hours. Willey had contacted all three by

telephone at their homes on December 14 to make the referrals.

The Union's defense: unemployment exhausted; short-term to finish job.

The defense is rejected. Violation found.

65. December 16—Sharon Sheet Metal

Vincent Cappolo was referred to Sharon on December 16. His work card does not indicate that the referral was to a short-term job. At the time, Cappolo was credited with 1147 hours. Willey had contacted Cappolo at his home on December 14 to refer him to this job.

Union's defense: HVAC; unemployment exhausted.

Defense rejected. Violation found.

66. December 18—King Mechanical

King Mechanical requested that the individuals referred be able to weld. Since Kilpatrick cannot weld, the referrals were lawful.

67. December 20—PCI

Daniel Allen, Richard Eastburn Jr., Matthew Clark, and Timothy Laidlaw were referred to PCI on December 20. Their work card does not indicate a short-term job. At the time, at least three of the referrals were credited with more hours than Kilpatrick.

The Union's defense: short-term to finish job; unemployment exhausted.

The defense is rejected. Violation found.

68. December 22—E. J. Deseta

Frederick Chidister and Richard Morgan Sr. were referred to Deseta on December 22. Their work card does not indicate a short-term job referral. At the time of their referrals they were credited with more hours than Kilpatrick.

The union's defense: HVAC; unemployment exhausted.

The defense is rejected. Violation found.

69. December 22—United S. M., Inc.

Michael Pace was referred to United S. M., Inc. on December 22. His work card does not indicate a short-term job referral. At the time, Pace was credited with 811 hours. He worked for United for 11 days.

Union's defense: HVAC; short term.

The defense is rejected. Violation found.

70. December 24—RACS Sheet Metal

Frank Flem was referred to RACS on December 24. His card does not indicate a short-term job referral and he remained with RACS for 8 days.

At the time, Flem was credited with 330 hours.

The Union's defense: HVAC; RACS 1 week.

Defense rejected. Violation found.

71. December 27—E. J. Deseta

Dennis Capilato and John Mathes Jr. were referred to Deseta on December 27. Their work card indicates a 2- to 3-week job. At the time Capilato was credited with 389 hours and Mathes was credited with 664 hours.

The Union's defense: HVAC.

The defense is rejected. Violation found.

72. December 27—Ryan Sheet Metal

Frank Spinelli was referred to Ryan on December 27. His work card indicates a 2- to 3-week job.

The Union's defense: HVAC; 2-3 weeks.

The defense is rejected. Violation found.

On the following dates, the named individuals were unlawfully referred to jobs for the named employers. In each case the referred individual had more hours credited to him, at the time of referral, than to Kilpatrick. In each case where an individual was referred for a week or less, the referral was found to be by telephone call to the referral's home²² or by other means and not based on evidence of the individual's physical presence at the hiring hall. Work card notes as to length of jobs are included. In each case the defense has been fully considered and is one of those previously rejected for reasons stated earlier in this decision.

	<i>Date</i>	<i>Referral</i>	<i>Company</i>	<i>Work card note</i>
73.	12/28	Anthony Visco	D & D Goldstein	None
74.	12/28	William Popoff	E. J. Deseta	None ²³
		Steven Burrows	E. J. Deseta	None
75.	12/29	Donald Mancer	United Sheet	2 days*
76.	12/30	J. Chojnowski Jr.	Stone & Webster ²⁴	1 day
		Edward Agnew	Stone & Webster	1 day*
77.	1/4/94 ²⁵	Joseph Ilconich	Urban Sheet Metal Co.	1-2 wks.
78.	1/11	K. Newsham	NSC	None
79.	1/12	Daniel Allen	NSC	None
80.	1/13	John Eichenberg	Windico	1 wk.
81.	1/17	W. Wilson Jr.	NSC	None
82.	1/19	S. Marchinkiewicz	Deseta	couple wks.
83.	2/2	S. Traczykiewicz	Genesio	1 month
84.	2/2	William Dodd Sr.	Deseta	None
		Haskell Amit	Deseta	2-3 wks.
		E. McKenna	Deseta	None
85.	2/2	Frederick Gayda	NSC	1 wk.
		Harry Filler Jr.	NSC	1 wk.
86.	2/2	Edward Marshall	Urban Sheet Metal Co.	Minority ²⁶

²² * No telephone calls were made by anyone from the union hall between December 24, 1993, and January 3, 1994. It is presumed the hall was closed and referrals made from Willey's home.

²³ One work card is divided between a referral on 12-27-93 for Mathes and Capilato for 2-3 weeks and a referral on 12-28-93 for Popoff and Burrows with no indication of a short-term job.

²⁴ The Respondent asserts that a welder was requested with red badge credentials. Since the work card for this referral does not mention either, the defense is rejected.

²⁵ Hereafter all dates are in 1994 unless noted otherwise.

²⁶ The word "minority" appears on the work card. The Union appears to contend that Marshall is a member of a minority and it referred him rather than Kilpatrick in order to satisfy affirmative action requirements. However, I find the single word explanation insufficient as a defense to the allegation.

	<i>Date</i>	<i>Referral</i>	<i>Company</i>	<i>Work card note</i>
87.	2/7	Edward Kouser	NSC	None
88.	2/7	Jimmy Skinner	Thermodesign	1 wk.
89.	2/9	John Sullivan	NSC	None
		T. Beckel Jr.	NSC	None
90.	2/11	C. McGroarty	Aldon Systems	None
91.	2/15	Timothy Laidlaw	Plumb-Town, Inc.	None

Following the investigation of Kilpatrick's complaint by the International and Willey's offer to him of the AC&S job, and subsequent to Kilpatrick's turning down that job on February 16, Willey did not contact Kilpatrick again for referral. Thereafter, a large number of referrals were made to individuals with more hours worked than Kilpatrick. Despite the unpleasanties exchanged during the conversation between Kilpatrick and Willey on February 16, there was an obligation thereafter to refer Kilpatrick to jobs under the existing rules and Willey's refusal to contact him with referrals was in violation of those rules and of the Act. Within the rules, Kilpatrick had the right to turn down five referrals before being abandoned for referral. This right remained in existence until his withdrawal as of March 31, 1994. Rather than list these additional violations which are apparent from the records, I shall leave the specific findings to the compliance stage of this case.

CONCLUSIONS OF LAW

1. SMCA and certain of its employer-members have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to refer Karl Kilpatrick to employment with various employers based on arbitrary and discriminatory considerations the Union has restrained and coerced Karl Kilpatrick and other employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act and has been attempting to cause and has caused employers to discriminate against Karl Kilpatrick in violation of Section 8(a)(3) and Section 8(b)(2) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent Union has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom. In particular, I shall recommend that it cease and desist from failing to refer Karl Kilpatrick or other applicants for employment in accordance with the hiring hall practices and procedures set forth in both its collective-bargaining agreement with the Sheet Metal Contractors Association of Philadelphia and Vicinity and its internal rules. In order to effectuate the purposes of the Act I shall also recommend that the Union be required to refer Karl Kilpatrick and other applicants for employment in accordance with the applicable hiring hall rules and to make Kilpatrick whole for any loss of earnings he may have suffered as a result of its failure to follow normal hiring hall practice in considering him for referral.

[Recommended Order omitted from publication.]